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Thomas v. Arizona Public Service Co., 89-ERA-19 (Sec'y Feb. 22, 1994)

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DATE: February 22, 1994
CASE NOS. 89-ERA-19 and 92-ERA-57 [1]

IN THE MATTER OF

SARAH THOMAS,

COMPLAINANT,

v.

ARIZONA PUBLIC SERVICE COMPANY,

RESPONDENT. [2]

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINTS

These cases arise under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988). The parties submitted a Settlement Agreement and a General Release (jointly referred to as "agreement") and asked the Administrative Law Judge (ALJ) to approve the agreement and dismiss the complaints with prejudice. The ALJ recommends approval and dismissal.

In Case No. 89-ERA-19, the Secretary issued a Decision and Order on September 17, 1993, finding that Respondent violated the ERA. In Case No. 92-ERA-57, the ALJ issued on November 10, 1992, a Recommended Decision and Order Granting Complainant's Motion for Dismissal Without Prejudice. Complainant's October 22, 1993, complaint is pending before the Wage and Hour Administrator.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of

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Complainant's allegations that Respondent violated the ERA.

Paragraph 1.4 provides that any prior decisions in these cases "cannot be used, referenced, applied, or relied upon in

any respect in any subsequent action, proceeding, claim, or litigation of any type involving either of the parties hereto." The paragraph is interpreted to permit the Secretary and Administrative Law Judges to rely on such prior decisions in any cases in which neither Complainant nor Respondent are parties.

Consistent with Paragraph 3 of the agreement, which governs confidentiality, and the December 30, 1993, letter from Respondent's counsel (attached), a copy of Respondent's request for confidential treatment will be placed in the record. Pursuant to 29 C.F.R. § 70.26, Respondent seeks notification of any request under the Freedom of Information Act involving the settlement, so that it may preserve its rights. Paragraph 3.3 provides that "[n]othing in this Agreement shall be construed to restrict the disclosure of the terms of this Agreement where required by law."

As noted in Paragraph 7.1 concerning the law which governs the agreement, nothing in it "shall be construed to limit or restrict the authority of the U.S. Secretary of Labor or any federal court pursuant to federal law. . . ."

I find that the agreement, as here construed, is a fair, adequate, and reasonable settlement of the complaints. Accordingly, I approve the agreement and DISMISS with prejudice the complaints in Nos. 89-ERA-19 and 92-ERA-57. A copy of this Order shall be sent to the Wage and Hour Administrator for appropriate action on Complainant's October 22, 1993 complaint.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] Complainant also sought dismissal of her October 22, 1993, complaint against Respondent. A copy of this Order shall be sent to the Wage and Hour Administrator for appropriate action on that complaint.

[2] Case No. 92-ERA-57 originally was captioned "Sarah C. Thomas v. Arizona Public Service Company/Palo Verde Nuclear Generating Station."